

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 556 of 2001

in

SPECIAL CIVIL APPLICATION No 5335 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PRUTHVISINH S. RAIJADA

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 556 of 2001
MS PAHWA FOR M/S THAKKAR ASSOC. for Appellant No.
..... for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The appellant-petitioner was appointed as Armed Constable by an order dated 14.3.1984, at the salary of Rs.843/- per month. Within a period of nine months of his service as a temporary servant, he was served with a show cause notice dated 11.12.1986, issued by the Commandant of S.R.P.-respondent No.2, calling upon him to show cause as to why his services should not be terminated for not remaining present in service from 15.4.1986 to 19.4.1986 for five days, from 21.4.1986 to 28.4.1986 for eight days, from 5.5.1986 to 6.5.1986 for two days, and from 2.6.1986 onwards without obtaining permission and leaving the Head Quarter. Apart from this not remaining present on duty without permission, about 12 instances of this nature were also there.

1.1 Thus, it appears that, during the short tenure of service of less than a year, he was absolutely negligent, irresponsible and inactive in duty. Services of such persons were not required in a disciplined force like the Police Department by the Government. In that view of the matter, he was called upon to show cause, within 10 days, as to why his services should not be terminated, otherwise it would be considered that he was not willing to offer any explanation and his services may be terminated.

2. The appellant-petitioner replied to the show cause notice by his reply at Annexure-B to the petition, wherein he stated that, because of their family disputes regarding the land, he had permanent effect on his mind. Therefore, he was always remaining disturbed. Whenever he got the news of such disputes, he was feeling tense and because of that, on earlier occasion also, he remained absent due to his sickness, for which he feels really ashamed. About the incident of 2.6.1986 of leaving the Head Quarter without the permission of anyone, he has tried to offer the explanation that, when he had gone to the Dispensary, the Medical Officer was not present, therefore, he had gone to Civil Hospital and on the advice of the Medical Officer of Civil Hospital, he waited to leave the Head Quarter after obtaining the permission, but he could not get the permission, therefore, he left for his native. In the end, he stated that he was really sorry for his act and assured that in future, he would not commit such mistakes. He also requested that, considering his family circumstances and his condition, he may be excused by giving one more

opportunity of improving.

3. However, respondent No.2, by his order dated 30.1.1997, terminated his services with effect from 3.1.1987 by giving him one month notice pay (Annexure-C to the main petition). This was challenged by him before this Court by way of Special Civil Application No.5335 of 1987, which was dismissed by the learned Single Judge of this Court (J.N. Bhatt, J.) on 25.2.2000. Hence, this Letters Patent Appeal.

4. Learned counsel, Ms. Pahwa, for the appellant-petitioner, vehemently, submitted that the impugned order of termination of service passed by respondent No.2 is not an order of termination simpliciter, but it is passed by way of a punishment by dispensing with the departmental inquiry. She submitted that, if the veil is lifted, then it is clear that the impugned order of termination is not an order of termination simpliciter, but it is a camouflage and under the guise of the impugned order, the appellant-petitioner is dismissed from service without holding regular inquiry. She, therefore, submitted that the impugned order of termination ought to have been quashed and set aside by the learned Single Judge of this Court, but the learned Single Judge has also committed an error in holding that it was an order of termination simpliciter. In support of her submission, Ms. Pahwa has placed reliance on provisions of Clause 89 of the Gujarat Police Manual, 1975 (Vol.I), more particularly, Clause 89(3)(e). She submitted that, by retaining as many as three juniors named in the petition, respondent No.2 terminated the services of the appellant-petitioner, which was illegal.

5. For appreciating the contention of Ms. Pahwa, the relevant provisions of Clause 89 of the Gujarat Police Manual are required to be referred, which read as under :-

"89. Temporary Appointments:- (1) (a) Orders sanctioning every temporary appointment which is not for a definite period, should make it clear that the appointment is made 'until further orders'. Appointments of temporary Government servants for definite period should be restricted to exceptional cases.

(b) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the

Government servant to the appointing authority or by that authority to the Government servant.

- (c) Where the temporary Government servant has put in service for a period exceeding one year, the period of such notice shall be one month and where such Government servant has put in service for one year or any period less than one year, the period of such notice shall be one week :

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice, at the same rates at which he was drawing pay and allowances immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of the notice period.

(2).....

(3)(a).....

(b).....

(c).....

(d).....

(e) Retention of a junior person in service

and terminating the services of a senior person in exercise of the powers to terminate the services of such persons is held discriminatory. It is, therefore, desirable that whenever it becomes necessary to terminate the services of a temporary Government Servant for misconduct or for unsatisfactory conduct or for unsatisfactory work or for such default as would warrant termination of services, and the Government Servant concerned is senior to another Government Servant who is retained in service, full procedure of departmental inquiry should be followed before terminating the services of such Government Servant. If, it is proposed to debar him from future employment under Government having regard to the seriousness of the default/misconduct, the best course would be to resort to dismissal or removal from service instead of termination of the services of such person.

But if the default or misconduct is not serious, it would be desirable to terminate the services of such person only after following the

proper procedure of departmental enquiry."
(Emphasis Supplied).

6. It is clear from the reply-affidavit filed by respondent No.2 before the learned Single Judge of this Court in the writ petition that he had passed the impugned order of termination at Annexure-C under Clause 89(1)(C) of the Gujarat Police Manual.

6.1 Under Clause 89(3)(e), it is provided that whenever it becomes necessary to terminate the services of a temporary Government Servant for misconduct or for unsatisfactory conduct or for unsatisfactory work or for such defaults as would warrant termination of services, and the Government Servant concerned is senior to another Government Servant who is retained in service, full procedure of departmental inquiry should be followed before terminating the services of such Government Servant. If, it is proposed to debar him from future employment under Government having regard to the seriousness of the default/misconduct, the best course would be to resort to dismissal or removal from service instead of termination of the services of such person. At the same time, it is provided under Clause 89(3)(e) that, if the default or misconduct is not that serious, then in that case, it would be desirable to terminate the services of such person only after following the proper procedure of departmental enquiry.

7. From the above, it is clear that, looking to the misconduct of the appellant-petitioner of continuously remaining absent from duty without permission, respondent No.2 was of the opinion that, instead of debarring him from future employment under the Government, it would be desirable only to terminate his services. However, before terminating his services, he had first issued show cause notice dated 11.12.1986 (Annexure-A to the petition) to the appellant-petitioner, which was replied by the appellant-petitioner (Annexure-B to the petition) and, thereafter, the impugned order of termination came to be passed by respondent No.2 after considering his reply. The appellant-petitioner himself admitted all the previous misconducts committed by him, and he was not able to explain the misconduct of remaining absent without permission. On main points mentioned in the show cause notice, he has stated in his reply that, if he is given an opportunity to improve, then, he will improve. How many opportunities be given to him! He was in service as Armed Police Constable in the Police Department, which is a disciplined force. At the

threshold of his career, within a period of less than one year, he has time and again remained absent from duty without any valid reasons, without prior permission of the Competent Authority. Such a person cannot be kept in service. Considering the reply-affidavit by respondent No.2 before the learned Single Judge of this Court in the writ petition and the impugned order dated 30.1.1987, it is more than clear that the impugned order dated 30.1.1987 passed by respondent No.2 is not an order of punishment and no stigma is cast against the appellant-petitioner by passing the said order. It was an order of termination simpliciter.

8. We have carefully gone through the order passed by the learned Single Judge and we are in complete agreement with the reasons assigned by him for dismissing the writ petition. In our view, the learned Single Judge rightly held that the impugned order of termination is an order of termination simpliciter without stigma and not an order of punishment.

9. In view of the above, we are not inclined to take a different view of the matter than the view taken by the learned Single Judge while dismissing the petition. This appeal, therefore, fails and is hereby summarily dismissed.

[B.J. SHETHNA, J.]

[A.L. DAVE, J.]

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